

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 18 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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AHMAD KASAM GAFUR (MUSALMAN GHANCHI)

Versus

THE STATE OF GUJARAT AND ANOTHER

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Appearance :

MR RJ GOSWAMI for Applicant.

MS MANISHA SHAH, APP for Respondent No. 1.

NOTICE SERVED BY DS for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

By filing this application under Section 482 of the Criminal Procedure Code, the applicant has prayed that complaint being I-C.R.No.111/2004 registered with Valsad City Police Station as well as

proceedings of Criminal Case No.1453/2004 pending before Judicial Magistrate, First Class, Valsad may be quashed.

Aforesaid complaint is filed by respondent No.2 against the applicant on the allegation that the bank had given loan of Rs.15,000/- to the accused for the purpose of his carpentry business and that the loan amount has not been repaid.

Mr.Goswami, learned advocate for the applicant submitted that this is merely a loan transaction and Sections 406, 408 or 420 of the Criminal Procedure Code are not attracted in this matter. He submitted that even after the complaint entire amount is paid with interest. For this, he has relied upon the statement of Manager of the bank, which is addressed to the police inspector. He submitted that in view of above, now the bank is also not interested in proceeding with the complaint as it has received the entire amount and, therefore, the bank has not filed any appearance in this matter.

Ms.Manisha Shah, learned APP submitted that the complaint is filed by the bank and according to her offence under Section 420 is compoundable.

Considering the nature of offence, which is with regard to non-payment of loan, in my view, it is purely of civil nature. Therefore, it cannot be said that provisions of Section 420 and 406 of the Criminal Procedure Code are attracted. Apart from the said aspect, even the bank has informed the police inspector that they have received the entire amount and perhaps because of that only they have not appeared in the

present proceedings.

In my view, reading the complaint it cannot be said that there is entrustment of any property and that provisions of Section 406 can be said to have been attracted. Considering the said aspect of the matter, this application is allowed. Complaint being I-C.R.No.111/2004 registered with Valsad Police Station and proceedings of Criminal Case No.1453/2004 pending before learned Judicial Magistrate, First Class, Valsad and all other consequential proceedings are quashed and set aside. Rule is made absolute.

(P.B.MAJMUDAR, J.)

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